Filed 5/25/12 Woo-Ming v. Gordon CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

GEOFFREY E. WOO-MING, Plaintiff and Appellant, v. JILL GORDON, Defendant and Respondent.	C067397 (Super. Ct. No. 34200900054660CUBTGDS)

Plaintiff Geoffrey E. Woo-Ming appeals from two trial court orders in his action against defendant Jill Gordon. As we explain, he has forfeited his appellate claims due to deficiencies in his briefing. Further, his claims lack merit. Accordingly, we shall affirm.

BACKGROUND

Woo-Ming sued Gordon and others (not party to this appeal) on August 3, 2009. The complaint is nearly incomprehensible. While difficult to decipher, the complaint appears to allege that Woo-Ming bought a medical corporation and was doing

business as "Sacramento Male Performance Clinic," but Gordon and others deprived Woo-Ming of the benefits of the sale. The only mention of Gordon was that she incorporated the company. A copy of the articles of incorporation is attached to the complaint, and it identifies Gordon as an attorney.

Gordon demurred, in part alleging Woo-Ming failed to obtain leave to sue her and the complaint against her was based on her actions taken in her capacity as an attorney. The demurrer was dropped, because Woo-Ming filed an amended complaint in response to a codefendant's demurrer.

On December 11, 2009, Woo-Ming filed his amended complaint, in part alleging Gordon had drafted a management services agreement in connection with the sale of the business, and her actions amounted to intentional interference with prospective economic advantage. The amended complaint further alleged that Gordon "was also guilty of oppression when Woo-Ming signed a settlement agreement under duress[,]" which Woo-Ming characterized as fraudulent conduct done in concert with codefendants. A letter attached to the amended complaint shows Gordon was acting as opposing counsel when she tendered a settlement agreement to Woo-Ming, *which he signed*.

Gordon again demurred, and the demurrer tentatively was sustained with leave to amend.

On April 5, 2010, *before the ruling on the demurrer to the first amended complaint*, Woo-Ming filed a second amended complaint. In addition to confusing allegations and voluminous exhibits, Woo-Ming attached a declaration purporting to explain

his theory of liability.[1] The attachments include a copy of a full release Woo-Ming signed pursuant to the settlement agreement, which was effective as to the attorneys and agents of named defendants.

On April 14, 2010, the trial court generally affirmed the tentative ruling on the demurrer to the first amended complaint, adding: "Given that plaintiff has already filed a second amended complaint, defendant may file and serve a response to that pleading no later than April 30, 2010."

Gordon promptly demurred. On August 20, 2010, the trial court sustained the demurrer without leave to amend, "for the reasons stated in the moving papers, including but not limited to Civil Code section 1714.10, the 'agent's immunity rule,' plaintiff's lack of standing to assert the claims against defendant Gordon, and plaintiff's prior release of all claims against defendant Gordon (and others)."

Notice of entry of a September 10, 2010, judgment of dismissal was made on September 20, 2010.

Gordon then moved for attorneys fees, pursuant to a fees clause in the settlement agreement. The motion sought over $50,000, plus fees for litigating the fees motion, and was supported by a declaration and appropriate exhibits detailing the work done on the case, the reasonableness of the claimed hourly rates, and so forth.

[1] We do not find the declaration illuminating.

Woo-Ming's opposition to the fee motion reargued the merits of the lawsuit and claimed the settlement agreement was signed under duress. Woo-Ming's supporting declaration stated "After a month of heated discussion, under duress I signed a settlement agreement . . . believing this was the only way to obtain SMPC's medical records and to get [codefendant] Weaver to leave."

On December 13, 2010, Woo-Ming moved for relief from the dismissal, alleging "mistake" in that he "should have" alleged a conspiracy, conversion and misappropriation of trade secrets against Gordon, and he sought further leave to amend. Gordon opposed this motion, arguing it did not comply with the standards for a motion to reconsider and Woo-Ming had not shown excusable mistake.

On December 20, 2010, the trial court granted the motion for attorney fees of $57,279.50, explaining the reasonableness of that amount. The trial court noted that the time to appeal from the dismissal order had passed.

On January 31, 2011, the trial court denied the motion for relief from dismissal, finding no excusable mistake, and finding that the proposed new complaint did not cure the problems identified in the prior three complaints.

On February 7, 2011, Woo-Ming filed a notice of appeal from the order granting attorney fees and from the order denying relief from the dismissal.

DISCUSSION

Although Woo-Ming appears without counsel, we must apply ordinary appellate procedural rules to this case. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985 (*Rappleyea*).)

We presume court orders and judgments are correct. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) A party challenging a judgment or order has the burden to show error by making coherent legal arguments, supported by references to the record and legal authority, or the claims will be deemed forfeited. (See *People v. Freeman* (1994) 8 Cal.4th 450, 482, fn. 2 [failure to provide clear arguments] (*Freeman*); *In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 672-673, fn. 3 [failure to provide authority]; *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856 [failure to provide record references] (*Duarte*); see also *In re S.C.* (2006) 138 Cal.App.4th 396, 408.) Further, a claim unaccompanied by an explicit showing of prejudice also will be deemed forfeited. (See *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 105-106 (*Paterno*).)

I

Attorney Fees

Woo-Ming's sole attack on the attorney fee award is his contention that the settlement agreement on which it is based was obtained through duress and fraud, and was illegal.

Woo-Ming's briefing on this point is nearly unintelligible, and consists of a number of factual statements unaccompanied by record references or coherent analysis of legal authority. Thus

the point is forfeited. (*Freeman*, *supra*, 8 Cal.4th at p. 482, fn. 2; *Duarte*, *supra*, 72 Cal.App.4th at p. 856.)

Further, the trial court was not required to credit Woo-Ming's vague declaration to the effect that he felt forced into signing the settlement agreement. (See *Hicks v. Reis* (1943) 21 Cal.2d 654, 659-660.) Nor did Woo-Ming offer to return the consideration he obtained via the settlement agreement. A party cannot retain the benefits of a purportedly coerced settlement while attacking its detriments. Instead, promptly upon being free from the duress, the party must notify the other party of the intent to rescind, and restore "everything of value which he has received from him under the contract or offer to restore the same upon condition that the other party do likewise[.]" (Civ. Code, § 1691; *Village Northridge Homeowners Assn. v. State Farm Fire & Casualty Co.* (2010) 50 Cal.4th 913, 921-922.)

Accordingly, Woo-Ming has failed to show any abuse of discretion pertaining to the attorney fee award.

II

Motion for Relief

Woo-Ming contends he articulated viable causes of action in his motion for relief from the dismissal. Again, these claims are similarly difficult to decipher. Further, Woo-Ming fails to explain how his actions amounted to legally excusable neglect. Thus the claims are forfeited. (*Freeman*, *supra*, 8 Cal.4th at p. 482, fn. 2.)

Moreover, "The postdismissal motion, though citing Code of Civil Procedure section 473, was in substance nothing more than

a request that the court reconsider its ruling on the demurrer. An order denying such a motion is not appealable." (*Grenell v. City of Hermosa Beach* (1980) 103 Cal.App.3d 864, 869.)

In essence, Woo-Ming was attacking the denial of further leave to amend under the rubric of "mistake[.]" (Code Civ. Proc., § 473, subd. (b).) Had he filed a timely appeal from the dismissal order, he would have been able to propose new amendments on appeal. (*Id.*, § 472c.) The dismissal became final when Woo-Ming did not appeal therefrom. Regardless of how Woo-Ming characterized--or mischaracterized--his motion, "'To permit an appeal from the order refusing to vacate would give the aggrieved party two appeals from the same decision or, if the party failed to take a timely appeal from the judgment, an unwarranted extension of time starting from the subsequent order.'" (*Payne v. Rader* (2008) 167 Cal.App.4th 1569, 1576.)

Further, Woo-Ming's claim of "mistake" was based on his own lack of legal acumen. In some cases "a mistake of law may be excusable when made by a layman but not when made by an attorney." (*Tammen v. County of San Diego* (1967) 66 Cal.2d 468, 479.) But, "There is nothing in section 473 to suggest it 'was intended to be a catch-all remedy for every case of poor judgment on the part of counsel which results in dismissal.'" (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 611-612.) And when Woo-Ming chose to act *as his own counsel*, he bore the risk of his own negligence and cannot claim excusable mistake. (See *Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1412-1414 (*Hopkins*); *Burnete v. La Casa Dana*

Apartments (2007) 148 Cal.App.4th 1262, 1268-1270.) "The 'naïveté' of lay litigants in 'rely[ing] on themselves to protect their substantial legal interests' does not afford a ground for relief from adverse results." (*Hopkins*, *supra*, at p. 1414, partly quoting *Rappleyea*, *supra*, 8 Cal.4th at p. 979.)

Woo-Ming also contends he was denied oral argument on his motion for relief from the dismissal. He fails to provide any authority or coherent argument showing how he was prejudiced; therefore, this procedural point is forfeited. (See *Paterno*, *supra*, 74 Cal.App.4th at pp. 105-106.)

III

Sanctions

Although there has been no motion to impose sanctions in this case, we note that Woo-Ming's briefing leaves the reader mystified about the procedures followed in the trial court, the provenance of facts asserted, and the bases for the trial court's orders. He fails to make coherent arguments, and he fails to address procedural points fatal to his position, despite their having been brought to his attention by various trial court rulings and in Gordon's opposition papers and briefing. No attorney reasonably familiar with the facts and the relevant law would believe this appeal, as prosecuted and presented by Woo-Ming, had any chance of success. (See *People* v. *Craig* (1991) 234 Cal.App.3d 1066, 1068.) It "indisputably has no merit" and therefore is a frivolous appeal. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.)

We further observe that this is far from the first meritless appeal that Woo-Ming has prosecuted while representing himself. (See *Woo-Ming v. DeSalles* (Aug. 24, 2011, C065537) [rejecting plaintiff's claim of excusable mistake and affirming dismissal after demurrer, but declining to consider imposing sanctions on appeal where they were not requested]; *Woo-Ming v. Graves* (Sept. 22, 2008, C056314) nonpub. opn. [affirming dismissal of Woo-Ming's complaint after a SLAPP motion was granted, but declining to award sanctions on appeal]; *Woo-Ming v. Kaiser Foundation Health Plan, Inc.* (Nov. 9, 2006, C050767) nonpub. opn. [affirming where Woo-Ming and his wife ignored the standard of review and attempted to reargue facts found against them by an arbitrator]; *Woo-Ming v. Martinez-Senftner* (Aug. 22, 2001, C034184) nonpub. opn. [rejecting Woo-Ming's claim of excusable neglect and affirming dismissal due to discovery violations]; see also *Woo-Ming v. Weaver* (April 6, 2011, C065472) [dismissing appeal for noncompliance with appellate rules]; *Woo-Ming v. Graves* (May 11, 2009, C061557) [same].)

As stated, defendant has not moved for sanctions. However, in the event of another apparently frivolous appeal filed by plaintiff, we shall consider issuing an order to show cause *on our own motion* why sanctions should not be imposed and why he should not be declared a vexatious litigant. (See Code of Civ. Proc., §§ 391 et seq.; *In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 1005-1007.)

DISPOSITION

The orders from which the appeal has been taken are affirmed. Woo-Ming shall pay Gordon's costs on appeal. (Cal. Rules of Court, rule 8.278.)

DUARTE, J.

We concur:

BUTZ, Acting P. J.

HOCH, J.